IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1146 (M/S) of 2006

Smt. Sumati Verma,
W/o Sri Narendra Varma,
R/o A – 12, Shanti Nagar,
Roorkee Pargana and Tehsil – Roorkee,
District – Hardwar,
Presently R/o 16 – Civil Lines, Roorkee. **……Petitioner**

V e r s u s

1. District Judge, Hardwar, District – Hardwar.
2. Civil Judge, (Junior Division) Roorkee, District – Hardwar.
3. Registrar University of Roorkee, Roorkee, District – Hardwar.
4. University of Roorkee, Roorkee through its Vice Chancellor, R/o University of Roorkee, District – Hardwar.

……Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Mahaveer Singh Tyagi learned counsel for the petitioner, Sri Vipul Sharma, learned counsel for respondents no. 3 and 4 and Sri Paresh Tripathi, learned counsel for State of Uttaranchal on behalf of respondents no. 1 and 2.

By means of this writ petition, the petitioner has prayed for the following reliefs:

I. To set aside / quash the impugned order dated 25.05.2006 passed by respondent no. 1 and order dated 28.09.2004 passed by respondent no. 2 (contained as Annexure no. 7 and 5 respectively) to this writ petition.

II. *Issue any other writ, order or direction, which be deemed fit and proper under the facts and circumstances of the case in favour of the petitioner.*

III. *award cost of the writ petition to the petitioner.*

The facts as narrated in the writ petition are that petitioner / plaintiff has moved an application for amendment on 24.09.2004 in the Suit No. 225 of 1992 filed by the petitioner plaintiff. The said application was rejected by Civil Judge (Junior Division), Hardwar vide order dated 28.09.2004. Against the order dated 28.09.2004 passed by Civil Judge (Junior Division), Hardwar, plaintiff filed revision no. 118 of 2004 before District Judge.

District Judge, Hardwar vide order 25.05.2006 has rejected the revision holding that on the date of institution of aforesaid revision the power to hear the revision was lying with Hon'ble High Court and the same became available to the District Judge on dated 22.03.2006 and as such, the same has no retrospective effect and the District Judge has no jurisdiction to hear the aforesaid revision as it was filed prior to the amendment in the Code of Civil Procedure.

Explanation II of the amendment in CPC specifically provides that provisions of section shall also be applicable to orders passed, before or after commencement of this section in original suits or other proceeding instituted before such commencement. The view taken by the District Judge, Hardwar is against the explanation II of the aforesaid amendment.

In view of the aforesaid position, order dated 25.05.2006 passed by District Judge, Hardwar is hereby quashed and the

matter is remanded back to District Judge, Hardwar to decide the revision afresh on the merits.

With this direction the writ petition as well as interim relief application no. 10655 of 2006 is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J)

August 24, 2006
SKSharma